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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Extrajudicial, summary or arbitrary executions

Report by the Special Rapporteur, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolution 1996/74

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Introduction

1. This report is submitted pursuant to Commission on Human Rights resolution 1996/74 of 23 April 1996, entitled "Extrajudicial, summary or arbitrary executions". It is the fourteenth report submitted to the Commission on Human Rights since the mandate on "Summary and arbitrary executions" was established by the Economic and Social Council in resolution 1982/35 of 7 May 1982, and the fifth submitted by Mr. Bacre Waly Ndiaye.

2. The present report, which covers communications sent and received by the Special Rapporteur in the period ranging from 25 November 1995 to 1 November 1996, is divided into five chapters. In chapter I, the Special Rapporteur offers an interpretation of the mandate entrusted to him. Chapter II covers the activities undertaken by the Special Rapporteur in the framework of his mandate during the period under review. In chapter III, the various situations involving violations of the right to life which are relevant to his mandate are discussed. In chapter IV, he presents an account of issues requiring his special attention. The Special Rapporteur reports on his special concerns in chapter V. Lastly, chapter VI contains the Special Rapporteur's concluding remarks and recommendations designed to ensure more effective respect for the right to life.

3. Addendum 1 to the present report describes 95 country situations, including those in which the Special Rapporteur has taken action in the period under consideration. It presents, in summary form, the information received and transmitted by the Special Rapporteur, including communications received from Governments. Where considered appropriate, the Special Rapporteur also provides his observations on country-specific situations.

4. The Special Rapporteur wishes to emphasize that the present report is only approximately indicative of the occurrence of violations of the right to life worldwide. This is mainly due to the fact that the report reflects information received by the Special Rapporteur. He continues to find himself in a situation where for some countries the information brought to his attention is very complete, while other countries simply do not figure in his report because no information at all has been received, or the communications brought to his attention are not sufficiently specific to allow them to be processed within the framework of his mandate.

I. THE MANDATE

A. Terms of reference

5. As it had in previous years, the Commission on Human Rights in its latest resolution, 1996/74, requested the Special Rapporteur to continue to examine situations of extrajudicial, summary or arbitrary executions to respond effectively to information which comes before him, to enhance further his dialogue with Governments and to apply a gender perspective in his work. The Commission also requested the Special Rapporteur to continue monitoring the implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment, bearing in mind

the comments made by the Human Rights Committee in its interpretation of article 6 of the International Covenant on Civil and Political Rights, as well as the Second Optional Protocol thereto.

6. In the same resolution, the Commission further requested the Special Rapporteur, in carrying out his mandate, to continue to pay special attention to extrajudicial, summary or arbitrary executions of children and women and to allegations concerning violations of the right to life in the context of violence against participants in demonstrations and other peaceful public manifestations or against persons belonging to minorities. In addition, the Commission requested the Special Rapporteur to pay special attention to extrajudicial, summary or arbitrary executions where the victims are individuals who are carrying out peaceful activities in defence of human rights and fundamental freedoms.

7. In other resolutions adopted by the Commission on Human Rights at its fifty-second session, special rapporteurs were requested to pay particular attention to certain issues within the framework of their mandates. Those resolutions are the following: 1996/20, entitled "Rights of persons belonging to national or ethnic, religious and linguistic minorities"; 1996/32, entitled "Human rights in the administration of justice, in particular children and juveniles in detention"; 1997/47 entitled "Human rights and terrorism"; 1997/48, entitled "Question of integrating the human rights of women throughout the United Nations system"; 1996/49, entitled "The elimination of violence against women"; 1996/51, entitled "Human Rights and mass exoduses"; 1996/52, entitled "Internally displaced persons"; 1996/53, entitled "Right to freedom of opinion and expression"; 1996/55, entitled "Advisory services, technical cooperation and the Voluntary Fund for Technical Cooperation in the Field of Human Rights"; 1996/70, entitled "Cooperation with representatives of United Nations human rights bodies"; 1996/78, entitled "Comprehensive implementation of and follow-up to the Vienna Declaration and Programme of Action"; 1996/85, entitled "Rights of the Child".

8. In implementing his mandate, the Special Rapporteur takes into account the requests made by the Commission on Human Rights in the above-mentioned resolutions.

B. Violations of the right to life upon which the Special Rapporteur takes action

9. Since the creation of the mandate in 1982, action has been undertaken in a variety of situations. During the period under consideration, the Special Rapporteur has taken action in the following cases:

(a) Violations of the right to life in connection with the death penalty. The Special Rapporteur intervenes when capital punishment is imposed after an unfair trial, or in the case of a breach of the right to appeal or the right to seek pardon or commutation of sentence. He also intervenes if the convicted person is a minor, mentally retarded or insane, a pregnant woman or a recent mother;

(b) Death threats and fear of imminent extrajudicial executions by State officials, paramilitary groups, private individuals or groups

cooperating with or tolerated by the Government, as well as by unidentified persons who may be linked to the categories mentioned above;

(c) Deaths in custody owing to torture, neglect or the use of force, or life-threatening conditions of detention;

(d) Deatns due to the use of force by law enforcement officials, or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality;

(e) Deaths due to attacks by security forces of the State, or by paramilitary groups, death squads or other private forces cooperating with or tolerated by the Government;

(f) Violations of the right to life during armed conflicts, especially of the civilian population and other non-combatants contrary to international humanitarian law;

(g) Expulsion, refoulement, or return of persons to a country or a place where their lives are in danger, as well as the prevention of persons seeking asylum to leave the country where their lives are in danger through the closure of national borders;

(h) Genocide;

(i) Breach of the obligation to investigate alleged violations of the right to life and to bring those responsible to justice;

(j) Breach of the obligation to provide adequate compensation to victims of violations of the right to life.

C. Legal framework

10. For an overview of the international legal standards by which the Special Rapporteur is guided in carrying out his mandate, the Special Rapporteur refers to his report to the Commission on Human Rights at its forty-ninth session (E/CN.4/1993/46, paras. 42-68).

D. Methods of work

11. For a description of his methods of work, the Special Rapporteur refers to his report to the Commission on Human Rights at its fiftieth session (E/CN.4/1994/7, paras. 13-67), as well as to his subsequent reports to the Commission (E/CN.4/1995/61, paras. 9-11 and E/CN.4/1996/4, paras. 11-12).

II. ACTIVITIES

A. Consultations

12. The Special Rapporteur visited Geneva to present his report to the Commission on Human Rights at its fifty-second session in April 1996. In June, August, September and December 1996, the Special Rapporteur had

consultations with the Secretariat for the preparation of communications to Governments and of his reports to the General Assembly and the Commission on Human Rights. During these visits the Special Rapporteur also held meetings with a number of thematic and country specific rapporteurs, with the High Commissioner for Human Rights and with the Assistant Secretary-General for Human Rights. In addition, in December 1996, the Special Rapporteur held meetings, which were very productive, with representatives of missions from the Asian, Eastern European and Latin American regional groups.

13. The Special Rapporteur presented his first report to the General Assembly in New York on 18 November 1996. During this visit he also held consultations with the Under-Secretary General for Peacekeeping Operations, Mr. Kofi Annan, and with the two Assistant Secretaries-General for Political Affairs, Mr. Lansana Kouyaté and Mr. Alvaro De Soto.

14. In his capacity as Chairman of the meeting of special rapporteurs, he met with the Secretary-General during his visit to New York, attended the meeting of persons chairing the human rights treaty bodies in Geneva in September 1996, and had regular consultations with the High Commissioner for Human Rights.

B. Communications

15. During the period under review, the Special Rapporteur transmitted 131 urgent appeals on behalf of more than 1,100 persons 1/, as well as on behalf of members of certain families, various indigenous communities, groups of refugees, internally displaced persons and the civilian population in various conflict areas. Urgent appeals were transmitted to the Governments of the following countries: Argentina, Bahrain, Brazil, Burundi, Chad, China, Colombia, Comoros, Costa Rica, Djibouti, Egypt, El Salvador, Georgia, Guatemala, Guyana, Honduras, India, Indonesia, Iran, Israel, Jordan, Kenya, Malaysia, Mexico, the Netherlands, Nigeria, Pakistan, Russian Federation, Rwanda, Singapore, Sudan, Tajikistan, Tunisia, Turkey, Ukraine, United States of America, Uzbekistan, Venezuela, Viet Nam, Zaire. Among these were 13 joint urgent appeals transmitted with other experts of the Commission on Human Rights to the Governments of Colombia, Djibouti, Guatemala, Indonesia, Iran, Mexico, Russian Federation, Sudan, Tajikistan, Uzbekistan, Viet Nam, Zaire.

16. In addition, the Special Rapporteur sent allegations of extrajudicial, summary or arbitrary executions on behalf of more than 1,300 individuals to the Governments of the following countries: Algeria, Angola, Argentina, Armenia, Australia, Azerbaijan, Bahrain, Bangladesh, Bolivia, Brazil, Bulgaria, Burkina Faso, Cambodia, China, Colombia, Egypt, El Salvador, Ethiopia, France, Guatemala, Guinea, Guinea Equatorial, Haiti, India, Indonesia, Iran, Israel, Kenya, Morocco, Mexico, Myanmar, Nicaragua, Nigeria, Nepal, Pakistan, Papua New Guinea, Peru, Philippines, Romania, Russian Federation, Senegal, Sri Lanka, Sudan, Thailand, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela and Yemen. The Special Rapporteur also transmitted two alleged cases of extrajudicial, summary or arbitrary executions to the Turkish Cypriot community and one to the Palestinian Authority.

17. Allegations of a general nature were transmitted to the Governments of Australia, Azerbaijan, Bolivia, Brazil, China, Chile, Colombia, Egypt, El Salvador, Estonia, Indonesia and East Timor, Iran, Israel, Kenya, Malaysia, Mexico, Myanmar, Pakistan, the Russian Federation, Sri Lanka, Tajikistan, Thailand, Turkey, Ukraine and the United Kingdom.

18. Follow-up communications, either reminding the authorities of communications to which no reply had yet been received or requesting further clarification in regard to individual allegations to which the Government had responded, were transmitted to the Governments of the following countries: Afghanistan, Angola, Argentina, Armenia, Australia, Azerbaijan, Bahrain, Bangladesh, Bolivia, Botswana, Brazil, Bulgaria, Burkina Faso, Cambodia, Chad, China, Chile, Colombia, Cuba, Egypt, El Salvador, Estonia, Ethiopia, Germany, Guatemala, Guinea, Guinea Equatorial, India, Indonesia, Iran, Israel, Kenya, Malaysia, Mauritania, Mexico, Moldova, Myanmar, Nepal, Nicaragua, Pakistan, Papua New Guinea, Peru, Philippines, Romania, Russian Federation, Saudi Arabia, Sudan, Sierra Leone, Sri Lanka, Syria, Tajikistan, Thailand, Turkey, Ukraine, United Kingdom, United States of America, Uruguay, Uzbekistan, Yemen.

19. During the same period, the Governments of the following 39 countries provided a response to communications addressed to them in 1996 or in previous years: Afghanistan, Argentina, Armenia, Bahrain, Bangladesh, Brazil, Bulgaria, China, Chile, Colombia, Cuba, Egypt, El Salvador, Guatemala, Guyana, India, Indonesia, Iran, Iraq, Kenya, Malaysia, Morocco, Mexico, Myanmar, Peru, Philippines, Russian Federation, Saudi Arabia, Singapore, Sri Lanka, Syria, Togo, Tunisia, Turkey, Ukraine, United Kingdom, United States of America, Uruguay, Viet Nam. The countries which provided a reply after 1 November 1996 will be mentioned orally in the statement of the Special Rapporteur to the Commission on Human Rights.

C. Visits

20. During the year under review, the Special Rapporteur gave priority to the visit to Nigeria pursuant to Commission on Human Rights resolution 1996/79. The Special Rapporteur, together with the Special Rapporteur on the independence of judges and lawyers, Mr. Param Cumaraswamy, sought an invitation from the Government of Nigeria in April, June, July, September and October 1996 in order to carry out an on-site fact-finding mission to the country during that year but their efforts were unsuccessful. At the time this report was finalized, no visit had taken place and negotiations between the Government and the two Special Rapporteurs in this respect had not yielded any concrete results.

21. For more detailed information, reference is made to the corresponding country chapter in the addendum to the present report and to the separate report on Nigeria which the Special Rapporteur submitted jointly with the Special Rapporteur on the independence of judges and lawyers (E/CN.4/1997/62).

22. In addition, the Special Rapporteur increased his efforts to obtain invitations to visit countries, which in view of the situation of the right to life, are considered a priority. In this respect the Special Rapporteur

sent communications to the Governments of China, India, Mexico, Tajikistan, Turkey and the United States of America. Furthermore, the Special Rapporteur addressed letters to the Governments of Algeria and Sri Lanka, which had invited the Special Rapporteur previously, in order to agree on a mutually convenient date for a visit before February 1997. The Special Rapporteur also had meetings with representatives of China, Turkey and the United States of America. In regard to Tajikistan, the Special Rapporteur requested the High Commissioner for Human Rights to use his good offices to facilitate the extension of an invitation.

23. Despite these efforts, at the time the present report was finalized, the Special Rapporteur had not been invited to undertake any visits before February 1997. The Government of the United States of America extended an invitation for an on-site visit to take place after that date.

D. Other activities

24. During the period under review, the Special Rapporteur consulted regularly with non-governmental organizations or participated as a resource person in meetings and conferences organized by them. In order to prepare the interim report on the situation of human rights in Nigeria for submission to the General Assembly pursuant to Commission resolution 1996/79, the Special Rapporteur had a meeting with representatives of several non-governmental organizations in August 1996 in London. In addition, he participated in the following meetings: a meeting on Islam and Human Rights organized by the Lawyers Committee for Human Rights (London, April 1996); a meeting on the draft convention on enforced or involuntary disappearances organized by Amnesty International (Geneva, June 1996); the Seminar on Conflict Resolution in the Great Lakes region organized by Synergies Africa (Geneva, June 1996); the International Conference on Torture organized by Amnesty International (October 1996, Sweden); and the Meeting of the International Human Rights Council, organized by the Carter Center (November 1996, Atlanta, the United States of America).

25. Moreover, the Special Rapporteur attended the fifth session of the Commission on Crime Prevention and Criminal Justice, in May 1996 in Vienna, the first time he had attended a session of that Commission. The Special Rapporteur's cooperation with the High Commissioner for Human Rights and with other United Nations bodies in the implementation of his mandate is discussed in detail in section V.C, below.

26. During the fifty-second session of the Commission on Human Rights, the Special Rapporteur participated in a round-table discussion on genocide, televised by CNN, which was organized in Geneva by the United States delegation. The Special Rapporteur also gave a radio interview on the National Compensation Tribunal in Malawi. In addition, he participated in a round-table conference on the right to life in Africa organized by Amnesty International-Mauritius in the framework of the celebration of the tenth anniversary of the African Charter on Human and Peoples' Rights. Other participants included the vice-Prime Minister and Minister for Foreign Affairs of Mauritius, Mr. Paul Berenger, member of the African Commission on Human and Peoples' Rights and Amnesty International's legal advisor for Africa.

III. SITUATIONS INVOLVING VIOLATIONS OF THE RIGHT TO LIFE

A. Capital punishment

27. In its resolution 1996/74, the Commission on Human Rights requested the Special Rapporteur to continue monitoring the implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment, bearing in mind the comments made by the Human Rights Committee in its interpretation of article 6 of the International Covenant on Civil and Political Rights, as well as the Second Optional Protocol thereto.

28. In this context, the Special Rapporteur transmitted communications to the Governments of Bahrain, China, Egypt, Estonia, the Islamic Republic of Iran, Jordan, Georgia, Kenya, Malaysia, the Russian Federation, Singapore, the Sudan, Thailand, Ukraine, the United States of America and Uzbekistan. These communications included 36 urgent appeals which the Special Rapporteur transmitted on behalf of 144 individuals with the aim of preventing loss of life, after being informed that these persons were at imminent risk of execution. Several urgent appeals transmitted to the Government of the United States concerned mentally retarded persons who were facing imminent execution.

29. For more detailed information on capital punishment, see section IV.A, below.

B. Death threats

30. Reports informing the Special Rapporteur of situations where the lives and physical integrity of persons are feared to be at risk have accounted for a considerable part of the information brought to his attention. This year, the Special Rapporteur transmitted 56 urgent appeals with the aim of preventing loss of life on behalf of more than 330 persons, as well as on behalf of other groups of persons, including members of certain families, trade unions or human rights organizations.

31. Urgent appeals were transmitted on behalf of persons who had received death threats or whose lives were said to be at risk to the Governments of Argentina, Brazil, Cambodia, Colombia, Costa Rica, Djibouti, El Salvador, Guatemala, Iran, Kenya, Mexico, Nigeria, Peru and Rwanda. Human rights activists, trade unionists, community workers, religious activists, writers and journalists were particularly vulnerable to death threats. The Special Rapporteur is particularly concerned about the situation in Mexico where he noted a sharp increase in reports of death threats and intimidation of human rights activists, members of political parties and journalists during 1996. He also remains concerned about the critical situation in Colombia. The Special Rapporteur also sent urgent appeals to the Governments of Burundi, Chad and the Islamic Republic of Iran on behalf of persons who had been expelled or extradited from a neighbouring country despite the fact that there their lives were reportedly at risk in their country of origin.

C. Deaths in custody

32. The Special Rapporteur transmitted communications containing allegations of deaths in custody or life-threatening conditions of detention to the Governments of the following countries: Australia, Azerbaijan, Bahrain, Bulgaria, China, Egypt, El Salvador, Equatorial Guinea, India, Israel, Guinea, Kenya, Morocco, Mexico, Myanmar, Nepal, Pakistan, Peru, Philippines, Romania, Senegal, Sri Lanka, Tunisia, Tajikistan, Turkey, the United Kingdom, the United States of America, Yemen. The Special Rapporteur also sent two urgent appeals in this context on behalf of 85 persons to the Government of the Sudan and the Government of Chad after fears had been expressed that they might be extrajudicially, arbitrarily or summarily executed while in custody.

33. The Special Rapporteur is concerned about the persistence of allegations of deaths in custody suggesting patterns of violence against detainees, very often with a lethal outcome, in countries such as Egypt, India, Pakistan and Turkey. He is also concerned that a high percentage of the allegations of deaths in custody in Australia, Bulgaria and the United Kingdom concerned persons belonging to ethnic, linguistic or national minorities. The Special Rapporteur is especially worried that, as a general rule, and not only in countries where a pattern of deaths in custody appears to exist, there is very little indication of effective action by the State authorities to bring to justice those responsible for this type of violation of the right to life and to compensate the families of victims.

D. Deaths due to the excessive use of force by law-enforcement officials

34. The Special Rapporteur transmitted communications regarding violations of the right to life as a consequence of excessive use of force by police and security officers against participants in demonstrations to the Governments of Argentina, Bahrain, Bangladesh, El Salvador, Israel, Nicaragua and the United Kingdom of Great Britain and Northern Ireland. The Special Rapporteur also transmitted an allegation falling in this category to the leader of the Turkish Cypriot community.

35. The Special Rapporteur also transmitted allegations of violations of the right to life as a consequence of excessive use of force by police and security officers in various circumstances to the Governments of Bahrain, Bolivia, Brazil, Colombia, Equatorial Guinea, Kenya, Indonesia, Nepal, Pakistan, Peru, Turkey, the United States of America and Yemen. Moreover, the Special Rapporteur sent one urgent appeal to the Indonesian authorities on behalf of demonstrators in Ujung Padang, Sulawesi.

E. Deaths due to attacks by civil defence forces and by paramilitary groups

36. Members of paramilitary groups or armed individuals cooperating with security forces or operating with their acquiescence were also reported to have resorted to arbitrary and excessive force. In some instances, such groups were reported to have been established by the security forces themselves; in other cases they were said to be at the service of individuals

and/or organizations for the defence of a particular interest, in many cases of an economic nature. Allegations of violations of the right to life by paramilitary groups or armed individuals cooperating with security forces or operating with their acquiescence were transmitted to the Governments of Colombia, Guatemala and the Philippines, as well as to the leader of the Turkish Cypriot community. In addition, urgent appeals were transmitted to the Governments of Colombia and El Salvador.

37. The Special Rapporteur continues to be extremely concerned about the situation in Colombia. During 1996 he again received a large number of allegations and reports of massacres committed by paramilitary groups, such as the killing of 14 persons, including 2 minors, on 22 April in Segovia and the killing of 11 persons, including a six-year-old child, on 3 April 1996 in Antioquia. The Special Rapporteur was also distressed by allegations indicating that on 9 February 1996 seven persons from one family, including four minors and one 86-year-old man, were killed in Buenavista, in the Philippines by members of the Civilian Volunteers Organization, a group of citizens operating as a paramilitary group which is sanctioned by the Government and has the task to check rebel activities.

F. Violations of the right to life during armed conflicts

38. The Special Rapporteur received numerous reports suggesting that deaths as a consequence of armed conflicts continue to occur on an alarming scale. Allegations of killings of persons hors de combat, and in particular of civilians, during internal armed conflicts, were transmitted to the Governments of Bangladesh, Colombia, Myanmar, Papua New Guinea, the Russian Federation and Sri Lanka.

39. Several urgent appeals were transmitted to the Government of the Russian Federation after the Special Rapporteur had received reports expressing fear that groups of civilians in specified towns or areas were at risk of indiscriminate attacks by the Russian armed forces. The Special Rapporteur also sent an urgent appeal to the Government of Israel requesting it to ensure the right to life and physical integrity of all persons hors de combat in the south of Lebanon, and in particular of the civilian population, after he had received reports that up to 165 civilians had been killed as a result of attacks by Israel.

40. The Special Rapporteur is alarmed that many thousands of people not participating in armed confrontations have lost their lives as direct victims of conflicts, for instance through indiscriminate shelling or deliberate executions, or indirectly, as a consequence of blocking of the flow of water, food and medical supplies. Such measures were reported to have particularly affected children, the elderly, and those in poor health. In this context, the Special Rapporteur received particularly disturbing reports from Liberia, where factional fighting reportedly prevented relief assistance from reaching large numbers of severely malnourished civilians, including many children, in Grand Cape Mount County, claiming the lives of many and seriously endangering the lives of others.

41. Communal violence, understood as acts of violence committed by one ethnic, religious, linguistic, national or social group against another

group, was reported in Burundi, Liberia, Rwanda and Zaire. Government forces are often said to support one side in the conflict or even to instigate hostilities, rather than intervening to stop violence between different groups.

G. Genocide

42. The Special Rapporteur continued to observe a great reluctance in the international community to use the term "genocide", even when reference is made to situations of grave violations of the right to life which seem to match clearly the criteria contained in article II of the Convention on the Prevention and Punishment of the Crime of Genocide.

43. The Special Rapporteur is extremely concerned about the situation in the Great Lakes region, in particular, about the situation in Burundi, which, according to the Special Rapporteur on the situation of human rights in Burundi, is characterized by a long series of massacres and acts of genocide. 2/ The Special Rapporteur calls on the States concerned and on the international community to take all the necessary measures to prevent the situation from degenerating into large-scale killings that may reach the dimension of genocide.

44. The Special Rapporteur urges the international community and all concerned States to cooperate fully with the International Criminal Tribunal for the Former Yugoslavia and the Tribunal for Rwanda, particularly by arresting and handing over suspects, so as to bring to justice, as soon as possible, those responsible for the crime of genocide.

H. Imminent expulsion of persons to a country where their lives are in danger

45. The Special Rapporteur received reports about the imminent extradition, refoulement or return of persons to countries or areas where there are grounds to believe that their lives are at risk. In this context, the Special Rapporteur transmitted urgent appeals to the Governments of the Netherlands and Tajikistan.

I. Impunity

46. It is the obligation of Governments to carry out exhaustive and impartial investigations into allegations of violations of the right to life, to identify, bring to justice and punish the perpetrators, to grant compensation to the victims or their families and to take effective measures to avoid future recurrence of such violations. The Special Rapporteur has noted that impunity continues to be the principal cause of the perpetuation and encouragement of violations of human rights, and particularly extrajudicial, summary or arbitrary executions. He has sent communications in this respect to the Governments of Chile, Turkey and the Russian Federation (see also chap. IV, sect. A).

J. Rights of victims

47. The rights of victims or their families to receive adequate compensation is both a recognition of the State's responsibility for the acts committed by its personnel and an expression of respect for the human being. Granting compensation presupposes compliance with the obligation to conduct investigations into allegations of human rights abuses with a view to identifying and prosecuting the alleged perpetrators. Financial or other compensation provided to the victims or their families before such investigations are initiated or concluded, however, does not exempt Governments from this obligation.

48. The Special Rapporteur is concerned about the numerous reports he received which indicate that in many cases of violations of the right to life no compensation was provided. In most cases this seems to be the corollary of impunity. The Special Rapporteur regrets that, despite his requests in letters transmitting alleged cases of extrajudicial, summary or arbitrary executions, very few States have provided him with information in this respect.

49. The Special Rapporteur also notes that neither of the two Security Council resolutions establishing international criminal tribunals for the former Yugoslavia and Rwanda contain provisions concerning compensation for the victims. The Special Rapporteur believes that the establishment of an international fund for reparation payments should be considered. Such a fund could be allocated for the payment of at least some compensation to the victims or their families and would undoubtedly enhance faith in the work of these tribunals and people's willingness to cooperate with them.

IV. ISSUES REQUIRING THE SPECIAL RAPPORTEUR'S ATTENTION

A. Violations of the right to life of women

50. During the period under review, the Special Rapporteur took action on behalf of more than 80 women. This figure reflects only those cases in which it was specifically indicated that the victim was female, but does not necessarily show the actual number of women on whose behalf the Special Rapporteur intervened. This is attributable mainly to two reasons: in some cases, sources do not indicate whether the victim is male or female and the gender cannot be determined by the name; in other cases, allegations refer to groups of unidentified civilians or without gender specification, for example, the displaced population of a given region.

51. Violations of the right to life of women, as well as death threats and harassment, brought to the attention of the Special Rapporteur during 1996, were said to have occurred in, inter alia, the following countries: Argentina, Australia, Bahrain, Bolivia, Brazil, Colombia, Costa Rica, El Salvador, Ethiopia, Guatemala, Iran, Israel, Honduras, Mexico, Nepal, Papua New Guinea, Peru, the Philippines, Sri Lanka, Turkey.

52. The figure mentioned above shows that women make up a relatively low percentage of purported victims of violations of the right to life reported to the Special Rapporteur. The under-representation of women in the

political and economic life of many countries implies that they are less perceived as a threat and therefore less exposed to acts of violence by Governments. However, in areas where women participate actively in public life, they appear to be in a similar position as their male counterparts. Some examples in this regard are the following: Aida Abella, President of the Unión Patriótica of Colombia, who survived an attack on her life in May 1996; Zahra Rajabi, a leading figure in the Iranian People's Mojahedin Organization, reportedly killed in February 1996 in Turkey; Gloria Cano Legua, a lawyer of one of the survivors of the Barrios Altos massacre in Peru, who received death threats at the beginning of 1996; Débora Guzmán Chupén, a trade unionist leader in Guatemala, reportedly threatened with death for her trade unionist activities; Rocío Culebro, coordinator of the Red Nacional de Organismos Civiles de Derechos Humanos "Todos los Derechos para Todos" in Mexico, reportedly threatened with death shortly before presenting a report on the Aguas Blancas massacre to the Inter-American Commission on Human Rights.

53. In a number of cases, women were said to be targeted for being related to men who were persecuted for various reasons by security forces. This was the case of Reina Zelaya and her three daughters, who were reportedly threatened with death by members of the armed forces of Honduras. Allegedly, the threats were a result of the fact that the father of two of her daughters is a former member of the Honduran military intelligence unit who, reportedly, testified during investigations into past human rights violations in Honduras.

54. However, the fact that many women have been killed in situations of armed conflict, civil unrest and insurgency operations as a consequence of indiscriminate killings, cannot be disregarded. Thus, during 1996, the Special Rapporteur was informed that large numbers of women and children (see also next chapter) were killed in Burundi, Liberia, Sri Lanka, the Russian Federation, Rwanda and Zaire.

55. The Special Rapporteur wishes to emphasize that, owing to a lack of human resources, a more in-depth analysis of gender issues within his mandate has not been feasible. In this respect, he refers to the recommendation made at the third meeting of Special Rapporteurs, Representatives, Experts and Workings Groups of the Commission on Human Rights, during which concerted action by the United Nations Development Fund for Women, the United Nations Population Fund and the Centre for Human Rights was suggested, with a view to providing support in the recruitment of professionals who were experts on the human rights of women.

B. Violations of the right to life of minors

56. During the period under review, the Special Rapporteur took action on behalf of more than 60 minors. This figure reflects only the number of identified minors whose ages were reported to the Special Rapporteur. The Special Rapporteur is extremely distressed that children continue to be victims of violations of the right to life in many countries. The types of violations to which children were exposed included death threats, death in custody, deaths due to abuse of force by law-enforcement officials and deaths during armed conflict. In Burundi, Liberia, Pakistan, Sri Lanka, the

Russian Federation (Chechnya), Rwanda and Zaire, many children allegedly continued to be killed in the context of armed conflict or internal strife.

57. During 1996, violations of the right to life of children, including death threats and harassment, were reported in the following countries: Argentina, Bolivia, Bulgaria, Colombia, Costa Rica, El Salvador, Ethiopia, Honduras, Israel, Mexico, Peru, the Philippines, Papua New Guinea, Turkey. It is to be noted that according to the information received by the Special Rapporteur, children were mainly threatened with death because of their link to an adult. Thus, for example, in some cases threats directed against human rights activists, lawyers or trade unionists also included their children.

58. Some examples of minors for whom the Special Rapporteur took action are the following: Alejandro Mirabete, aged 17, reportedly killed by police officers in Buenos Aires, Argentina; Roxana Janeth Veliz Vargas, aged 13, reportedly killed in Shinahota, Bolivia, by members of the security forces; Kostadin Timchev, aged 17 and Assen Ivanov, aged 17, who reportedly died in custody in Bulgaria; Rubiela Alvarez Leal, aged 13 and Ildo Durán Alvarez, aged 15, reportedly killed by members of the Batallon de Contraguerrilla los Guanes in Colombia; Enrique Peraza, alias "little bandy", aged 14, allegedly killed in Santa Ana, San Salvador, by members of the Policía Nacional Civil; Nura Musa Faris Abu Sa'ad, aged 17, Qasim Suleiman Mohammed al-Njaili, aged 15, Mohammed 'Abdul Karim al-Astal, aged 14, and two other identified minors, killed by Israeli soldiers during a confrontation with Palestinian civilians; Henry Yabar Rosales, aged 15, reportedly killed by the police during a confrontation between football supporters in Lima, Peru; Josephine Beti, aged 4, Theresia Monta, aged 9, Piruke Siro, aged 11, Andrew Saririn, aged 1, and four other identified minors, reportedly killed in Simbo village, Buin, South Bougainville by Papua New Guinea defence forces; Awal Dire, aged 16, Awal Sani, aged 13, Badiri Shaza, aged 12 and Usen Kalu, aged 12, reportedly killed in Tukara, Bale, Ethiopia, by Ethiopian armed forces.

59. The Special Rapporteur is particularly shocked by allegations of deliberate use of firearms against street children by police and security forces participating in "social cleansing" in El Salvador. Allegations of deaths in custody of minors in Bulgaria are also most disturbing.

C. The right to life and mass exoduses

60. During the period under review, the Special Rapporteur was informed about large-scale human rights violations, including violations of the right to life, committed in the context of armed conflicts and civil unrest which led to massive displacements of populations in the Russian Federation (Chechnya), Colombia and Tajikistan. Displacement also resulted from ethnic violence in Burundi, Rwanda and Zaire. Confrontations between the Banyamulengue and autochthonous groups and Hutu refugees in North and South Kivu, Zaire, have led to further displacement of the refugee and local population, aggravating the tension in the Great Lakes region. 3/

61. During 1996, the Special Rapporteur transmitted urgent appeals on behalf of the following groups of refugees and/or internally displaced persons: Burundi refugees in Rwanda, after having been informed that

392 refugees were being expelled manu militari by soldiers of the Armée patriotique rwandaise to Cibitoke province in Burundi; displaced families of the Bellacruz estate, in Colombia, after they had been evicted by a paramilitary group and threatened with death if they returned; the civilian population in southern Lebanon, after Israel launched an attack on a United Nations compound in the village of Qana, which reportedly provided refuge to 400 civilians. Reportedly during the attack, the Palestinian refugee camp of 'Ayn al-Hilweh was also hit; the civilian population of Sernovodsk, which included many displaced persons from several parts of Chechnya, after having been informed that they continued to be at risk of indiscriminate attacks by Russian armed forces; internally displaced persons from Khovaling, after being informed that they were to be transported from Khovaling district to Tavildara, an area of active armed conflict in Tajikistan, where their lives could be at risk, especially because of the presence of landmines.

62. For a broader overview of the phenomenon and its repercussions on various aspects of human rights, reference is made to the report on internally displaced persons submitted to the Commission on Human Rights by the representative of the Secretary-General, Mr. Francis Deng. 4/

D. Violations of the right to life of persons exercising their right to freedom of opinion and expression

63. During the period under review, the Special Rapporteur took action on behalf of a large number of individuals in many countries who were said to have been killed or threatened with death for exercising their right to freedom of opinion and expression. The Special Rapporteur has continued to receive numerous reports concerning death threats against, and killings of, members of opposition political parties, trade unions, student movements, community organizations and human rights organizations, as well as of journalists and writers.

64. The Special Rapporteur is particularly concerned about reported violations of the right to life of journalists or death threats received by them. Examples in this regard are the following: Marcos Borges Ribeiro, Aristeu Guida da Silva and Reinaldo Countinho da Silva in Brazil; Thun Bun Ly in Cambodia; Carlos Orellana and José Rubén Zamora Marroquín in Guatemala; Ninfa Deandar, José Barrón Rosales, Gina Batista and 28 other identified journalists in Mexico; Natalya Alyakina in the Russian Federation; Jean Rubaduka in Rwanda; Safyettin Tepe and Metin Goktepe in Turkey; and Sahnoun Jqaouhari in Tunisia; Abdullah Hussein al-Bajiri, brother of the poet Ali Hussein Abdul Rahman al-Bajiri, reportedly killed because he was mistaken for his brother, in Yemen.

E. The right to life and the administration of justice

65. During the period under review, the Special Rapporteur continued to take action on behalf of persons involved in the administration of justice, particularly judges, prosecutors, lawyers, plaintiffs and witnesses in judicial proceedings, who either received death threats or were killed.

66. During the period under review, allegations were transmitted of violations of the right to life of, among others, the following lawyers:

Francisco Gilson Nogueria de Carvalho, killed in Natal, Rio Grande do Norte, Brazil; Jalil Andrabi, in India; Nizam Ahmed, a former Justice of the Sindh High Court and member of the Pakistan Bar Council and his son, killed in Pakistan; Ferdinand Reyes, shot dead in Dipolog City, in the Philippines. In addition, he sent urgent appeals on behalf of the following lawyers who were said to have been threatened with death in relation to their work: Dr. Federico Alberto Hubert in Argentina; Reinaldo Villalba in Colombia; Aref Mohamed Aref, a prominent human rights lawyer in Djibouti; Pilar Noriega, Digna Ochoa, and other lawyers of the Centro de Derechos Humanos "Miguel Agustín Pro-Juarez" (PRODH), in Mexico; and Gloria Cano Legua in Peru.

F. Violations of the right to life of persons belonging to national, ethnic, religious or linguistic minorities

67. During the period under review, the Special Rapporteur transmitted allegations to some 10 Governments regarding persons belonging to national, ethnic, religious or linguistic minorities. Communications were sent on behalf of, among others: Aboriginals in Australia; Chakmas in Bangladesh; members of the Guarani-Kaiowá indigenous community in Brazil; members of the Roma ethnic group in Bulgaria; Hutus and Tutsis in the Great Lakes region; Baha'is in Iran; Palestinians in Israel; members of the Kayin ethnic minority in Myanmar; Tamils in Sri Lanka; people of Kurdish ethnic origin in Turkey; detainees of Afro-Caribbean origin in the United Kingdom; Black Americans in the United States; Banyamulengues in Zaire. Reference is made to the addendum to the present report concerning country situations.

G. Violations of the right to life and terrorism

68. The Special Rapporteur is aware of the waves of violence caused by armed opposition groups resorting to terrorism as a tactic of armed struggle against Governments. He is aware that violent acts committed by such groups have led to killings of many innocent civilians in a number of countries, including Algeria, Colombia, Egypt, France, Israel and the Occupied Territories, Sri Lanka and Turkey.

69. The Special Rapporteur expresses his repugnance at terrorist acts and understands the difficulties that the concerned Governments face in controlling violence by terrorist groups. However, he has noted that, in some countries, the Government's reaction to terrorist groups has resulted in counter-insurgency strategies aimed at targeting those suspected of being members, collaborators or sympathizers of those groups. In this context, the Special Rapporteur wishes to emphasize once more that the right to life is absolute and must not be derogated from, even under the most difficult circumstances. Governments must respect the right to life of all persons, including members of armed groups, even when they demonstrate total disregard for the lives of others.

70. The request made by some Governments for the Special Rapporteur to take action with respect to killings committed by terrorists is to be noted. However, he wishes to emphasize that violent acts committed by terrorist groups do not fall within the purview of his mandate, as he can only take action when perpetrators are believed to have a link to a State. Nevertheless, he wishes to mention that he continued to receive reports of

killings committed by terrorists of members of security forces and civilians, with the aim of spreading terror and insecurity among the population.

H. Violations of the right to life of individuals carrying out peaceful activities in defence of human rights and fundamental freedoms

71. Information received by the Special Rapporteur indicates that threats and violations of the right to life against human rights defenders are occurring on an alarming scale. He is concerned that in some cases, despite the fact that he transmitted urgent appeals to concerned Governments requesting the authorities to undertake all necessary measures to protect the person, the subject in question was later killed, for example, José Giraldo in Colombia. The Special Rapporteur took action on behalf of, among others, the following human rights defenders: Luiz Gonzaga Danteas and Roberto Monte working at the Centro de Direitos Humanos e Memória Popular in Brazil; Josué Giraldo Cardona, president of the Comité Cívico por los Derechos Humanos del Meta; Susana Bravo and other members of the Comité de Derechos Humanos de el Carmen de Altrato in Colombia; Parag Kumar Das and Jalil Andrabi in India; Lourdes Feiguerez and Victor Clark from the Centro Binacional de Derechos Humanos and Teresa Jardí and her son, a counsellor at the National Commission on Human Rights, in Mexico; Jean Rubaduka, journalist and president of the Collectif des ligues des associations de défense de droits de l'homme au Rwanda; Alain Hgende, member of the Association zaïroise de défense des droits de l'homme in Zaire.

I. Violations of the right to life of individuals who have cooperated with representatives of United Nations human rights bodies (reprisals)

72. During the period under review, the Special Rapporteur continued to send urgent appeals on behalf of persons who had allegedly received death threats for having availed themselves of United Nations procedures for the protection of human rights. In this respect, he transmitted communications on behalf of: Innocent Chukwuma, coordinator of international lobby projects of the Civil Liberties Organization in Lagos, after being informed that he had been intimidated during the fifty-second session of the Commission on Human Rights; Gustavo Gallón Giraldo, director of the Comisión Colombiana de Juristas and Father Javier Giraldo Moreno, director of the Comisión Intercongregacional de Justicial y Paz, following the publication of a newspaper article in which they were accused of providing information to the High Commissioner on Human Rights with the aim of damaging the image of the armed forces; Tariq Hasan, reportedly threatened with death by Pakistani authorities, and particularly warned by a police officer that bringing the situation to the attention of human rights organizations could have serious consequences for him.

V. ISSUES OF SPECIAL CONCERN TO THE SPECIAL RAPPORTEUR

A. Capital punishment

73. The Special Rapporteur notes that while there is a fundamental right to life, there is no right to capital punishment. The death penalty is an exception to the right to life, and as any exception, it must be interpreted restrictively. The Special Rapporteur believes that because of the irreparability of the loss of life, the imposition of a capital sentence must fully respect all restrictions imposed by the pertinent international instruments on this matter. In addition, the application of these restrictions must be guaranteed in each and every case. In this context, the Special Rapporteur wishes to clarify that he undertakes action in cases of capital punishment in which international restrictions, which are analysed in the following paragraphs, are not respected. In such cases, the carrying out of a death sentence may constitute a form of summary or arbitrary execution.

74. The Special Rapporteur's action in response to allegations of violations of the right to life in connection with capital punishment has been guided by three main principles: the desirability of the abolition of the death penalty; the need to ensure the highest possible standards of independence, competence, objectivity and impartiality of judges and full respect of guarantees for a fair trial; and the observance of special restrictions on the application of the death penalty.

1. Desirability of the abolition of the death penalty

75. Although capital punishment is not yet prohibited under international law, the desirability of its abolition has been strongly reaffirmed on various occasions by United Nations organs and bodies in the field of human rights. Some examples in this regard, which reflect the increasingly firm stand taken by the international community against the death penalty, as a restriction of the right to life, are the following:

(a) Security Council resolutions 808 (1993) of 22 February 1993 and 955 (1994) of 8 November 1994 on the establishment of international criminal jurisdictions for the former Yugoslavia and Rwanda, respectively, which excluded the death penalty, and established imprisonment as the sole penalty to be imposed by these tribunals for crimes as abominable as genocide and crimes against humanity;

(b) The Human Rights Committee: in its comments on article 6 of the Covenant on Civil and Political Rights, the Committee stated that "while it follows from article 6 (2) to (6) that States parties are not obliged to abolish the death penalty totally they are obliged to limit its use and, in particular, to abolish it for other than the 'most serious crimes' (...) The article also refers generally to abolition in terms which strongly suggest (paras. 2 (2) and (6)) that abolition is desirable". The Committee concluded that all measures of abolition should be considered as a progress in the enjoyment of the right to life; 5/

(c) General Assembly resolutions 2393 (XXIII) and 2857 (XXVI). In the latter resolution, the General Assembly affirmed that "the main objective

to be pursued is that of progressively restricting the number of offences for which capital punishment may be imposed, with a view to the desirability of abolishing this punishment in all countries";

(d) Report of the Secretary-General on capital punishment, and implementation of the safeguards guaranteeing the protection of the rights of those facing the death penalty of 8 June 1995. 6/ In its concluding remarks it is stated that "an unprecedented number of countries have abolished or suspended the use of the death penalty";

(e) Economic and Social Council resolution 1996/15 on the safeguards guaranteeing protection of the rights of those facing the death penalty of 23 July 1996, in which, the Council noted that "an increasing number of countries abolished the death penalty and others followed a policy reducing the number of capital offences".

76. In addition, this abolitionist trend is also observed at a regional level. Thus, new members of the Council of Europe are required to sign within one year, and ratify within three years of joining the organization, the Sixth Optional Protocol to the European Convention, aimed at abolishing the death penalty, and are also required to place an immediate moratorium on executions. The Special Rapporteur notes with concern that Ukraine and the Russian Federation, which joined the Council of Europe in November 1995 and February 1996 respectively, have reportedly continued to carry out executions.

77. During 1996, the Special Rapporteur has received, with concern, reports of the extension of the scope of the death penalty in a number of countries to offences previously not punishable by death. In this context, he was informed that in June 1996 the General People's Congress in the Libyan Arab Jamahiraya reportedly approved the extension of the death penalty to crimes such as smuggling of drugs and alcohol and illegal trade in foreign currencies, and that on 25 April 1996 the Parliament of Kuwait reportedly passed a law, in accordance with which, capital punishment is mandatory for people using children to trade in narcotics, those repeatedly convicted of drug trafficking, and officials assigned to fight the narcotics trade who themselves trade in drugs. In addition, he also received reports, according to which amendments to the Estonian Criminal Code added two offences to the list of criminal acts punishable by death: violence against a police officer or a person equal to a police officer and crimes against humanity. These amendments reportedly entered into force on 11 March 1994 and 9 December 1994, respectively.

78. The Special Rapporteur also regrets that several countries, which despite their legislation allowing for capital punishment had not carried out death sentences in many years, resumed executions during 1996. Examples in this regard are: Guatemala, where the first execution in 12 years was carried out in September 1996; the Comoros where the first execution in 18 years was also carried out in September 1996; and Bahrain, where the first execution in 20 years was carried out in March 1996. Thailand and Zimbabwe are other examples.

79. Given that the loss of life is irreparable, the Special Rapporteur strongly supports the conclusions of the Human Rights Committee and emphasizes that the abolition of capital punishment is most desirable in order fully to respect the right to life. In this context, he welcomes the fact that, on 28 November 1995, the Government of Spain removed the death penalty from the Military Penal Code, and that the Parliament of Mauritius has passed a bill abolishing the death penalty for all offences. He also welcomes the abolition of the death penalty for all crimes in Belgium in August 1996, and in Moldova on 8 December 1995.

2. Fair trial

80. In monitoring the application of existing standards relating to the death penalty, as he has been requested by the Commission on Human Rights since 1993, the Special Rapporteur has directed his attention in particular to trial procedures leading to the imposition of capital punishment. All safeguards and due process guarantees, both at pre-trial stages and during the actual trial, must be fully respected in every case, as provided for by several international instruments. 7/

81. The Special Rapporteur wishes to reiterate that proceedings leading to the imposition of capital punishment must conform to the highest standards of independence, competence, objectivity and impartiality of judges and juries, in accordance with the pertinent international legal instruments. All defendants facing the imposition of capital punishment must benefit from the services of a competent defence counsel at every stage of the proceedings. Defendants must be presumed innocent until their guilt has been proved beyond a reasonable doubt, in strict application of the highest standards for the gathering and assessment of evidence. In addition, all mitigating factors must be taken into account. In this context, the Special Rapporteur wishes to express his concern about the existence of laws, particularly those relating to drugs offences in countries such as Malaysia and Singapore, where the presumption of innocence is not fully guaranteed, as the burden of proof lies partially on the accused. Moreover, these laws, owing to their strict formulation, do not leave any discretion to the judge to personalize the sentence or to take into account mitigating circumstances, giving them no other option than the mandatory imposition of the death penalty once the conclusion is reached that the defendant is guilty.

82. Furthermore, proceedings must guarantee the right of review of both factual and legal aspects of the case by a higher tribunal, composed of judges other than those who dealt with the case at the first instance. The defendant's right to seek pardon, commutation of sentence or clemency must also be guaranteed.

83. Reports were received concerning death sentences imposed after proceedings in which the defendants did not fully benefit from the rights and guarantees for a fair trial contained in the pertinent international instruments, in the following countries: Bahrain, China, Egypt, Guyana, Malaysia, Saudi Arabia and the United States of America. In this context, the Special Rapporteur is of the opinion, that even in those cases where the

law in force in a country is in accordance with fair trial standards as contained in international instruments, the application of these standards in each death penalty case has to be ensured.

84. A preoccupying issue that has come to the Special Rapporteur's attention during the past years concerns decisions by defendants who have been sentenced to death not to appeal to a higher jurisdiction or to request clemency or pardon, and to accept the imposition of the death penalty. In this context, the Special Rapporteur strongly shares the view expressed by the Economic and Social Council in its resolution 1989/64 of 24 May 1989 entitled "Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty", in which the Council recommended that Member States provide for mandatory appeals or review with provisions for clemency or pardon in all cases of capital offence.

85. The Special Rapporteur is particularly concerned about the imposition of the death penalty by special jurisdictions. These jurisdictions are often set up as a response to acts of violence committed by armed opposition groups or in situations of civil unrest, in order to speed up proceedings leading to capital punishment. Such special courts often lack independence, since sometimes the judges are accountable to the executive, or are military officers on active duty. Time limits, which are sometimes set for the conclusion of the different trial stages before such special jurisdictions, gravely affect the defendant's right to an adequate defence. The Special Rapporteur also expresses concern about limitations on the right to appeal in the context of special jurisdictions. This is particularly worrying as these special jurisdictions are generally established in situations where rampant human rights violations already exist.

86. Reports regarding the secrecy surrounding the trial and application of the death penalty in a number of States, in particular Belarus, China, Ukraine and Kazakstan are most disturbing. In this connection, the Special Rapporteur wishes to emphasize the fundamental importance of the right to a public trial. It has also been brought to his attention that in some countries there is considerable official reluctance to reveal statistical information on the death penalty. This secrecy reportedly affects family members, who are not informed in advance of the date of a relative's execution and have no right to the body after execution. In this regard, the Special Rapporteur wishes to refer again to resolution 1989/64 (see para. 84), in which the Economic and Social Council urged Member States to publish, for each category of offence for which the death penalty was authorized, and if possible on an annual basis, information on the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on appeal and the number of instances in which clemency had been granted.

87. The Special Rapporteur recalls that in previous reports to the Commission on Human Rights and the General Assembly he referred to the 1993 judgement of the Privy Council of the United Kingdom of Great Britain and Northern Ireland, the supreme judicial instance for the member States of the Commonwealth, in which it was held that awaiting the execution of a death sentence for five years after it had been handed down constituted in itself

cruel and inhuman punishment. Shortly before the finalization of this report, the Special Rapporteur was informed that, in October 1996, the Privy Council ruled that, in the Bahamas, it may be considered cruel or inhuman to execute a prisoner who has been on death row for more than three and a half years. According to the information received, the Privy Council was of the view that the five-year ruling was not to be regarded as a fixed limit applicable in all cases, but as a norm which may be departed from if circumstances so require. In this regard, the Special Rapporteur has expressed concern, on several occasions, that such decisions might encourage Governments to carry out death sentences more speedily, which, in turn, might affect the defendants' rights to full appeal procedures. In this sense, he wishes to reiterate that this judgement should be interpreted in the light of the desirability of the abolition of the death penalty. To solve the problem of the cruelty of awaiting execution on death row by executing the person faster is simply unacceptable.

Restrictions on the use of the death penalty

88. Capital punishment is prohibited for juvenile offenders under international law. Article 6, paragraph 5, of the International Covenant on Civil and Political Rights stipulates that "sentence of death shall not be imposed for crimes committed by persons below eighteen years of age ...". This principle has been embodied and reiterated in other international instruments, such as the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") and the Safeguards guaranteeing protection of the rights of those facing the death penalty.

89. The imposition of capital punishment on mentally retarded or insane persons, pregnant women and recent mothers is also prohibited. In this respect, the Special Rapporteur wishes to express his utmost concern about information according to which, since 1990, the Islamic Republic of Iran, Pakistan, Saudi Arabia, the United States of America and Yemen have executed prisoners who were under 18 years of age at the time of the crime. He is also deeply concerned about legislation in China reportedly allowing for death sentences for minors.

90. In addition, the Special Rapporteur has received allegations concerning executions of mentally retarded persons in the United States of America. Similar reports were received concerning Kyrgyzstan.

91. It is worth emphasizing that article 6, paragraph 2, of the International Covenant on Civil and Political Rights provides that, "in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes ...". In its comments on article 6 of the Covenant, the Human Rights Committee stated that the expression "most serious crimes" must be read restrictively to mean that the death penalty should be a quite exceptional measure. In addition, paragraph 1 of the Safeguards guaranteeing protection of the rights of those facing the death penalty, approved by the Economic and Social Council in its resolution 1984/50 of 25 May 1984, states that the scope of crimes subject to the death penalty should not go beyond intentional crimes with lethal or other extremely grave consequences. The Special Rapporteur concludes from

this, that the death penalty should be eliminated for crimes such as economic crimes and drug-related offences. In this regard, the Special Rapporteur wishes to express his concern that certain countries, namely China, the Islamic Republic of Iran, Malaysia, Singapore, Thailand and the United States of America, maintain in their national legislation the option to impose the death penalty for economic and/or drug-related offences.

B. Impunity

92. In his reports to the Commission on Human Rights, the Special Rapporteur has made ample reference to the obligation of States to conduct exhaustive and impartial investigations into allegations of violations of the right to life, to identify, bring to justice and punish the perpetrators, to grant adequate compensation to the victims or their families, and to take effective measures to avoid the recurrence of such violations. 8/

93. In addition, the Human Rights Committee has stated, both in its General Comments on article 6 of the International Covenant on Civil and Political Rights and in a number of decisions, that States parties are required to investigate all human rights violations, particularly those affecting the physical integrity of the victim; to bring to justice those responsible; to pay adequate compensation to the victims or their families; and to prevent the recurrence of such violations.

94. The Special Rapporteur has continued to receive information indicating that grave violations of the above-mentioned obligations have not abated. Impunity remains the principal cause for the perpetuation of violations of human rights, and particularly those of the right to life. The manner in which a Government reacts to human rights violations committed by its agents, through action or omission, clearly shows the degree of its willingness to ensure effective protection of human rights. Very often, statements and declarations in which Governments proclaim their commitment to respect human rights are contradicted by a practice of violations and impunity. The Special Rapporteur considers that even if in exceptional cases Governments may decide that perpetrators should benefit from measures that would exempt them from or limit the extent of their punishment, the obligation of Governments to bring them to justice and hold them formally accountable stands. 9/

95. In some cases, the basis for impunity lies in legislation that exempts perpetrators of human rights abuses from prosecution. Thus, the Special Rapporteur was informed that in August 1996 the Supreme Court of Chile confirmed that the case of Carmelo Soria had been filed owing to the application of Amnesty Law 2.191. During 1996, the Special Rapporteur was also informed that some cases he had transmitted to the Government of Peru in previous years had been filed owing to the application of 1995 Amnesty Law.

96. In other cases, despite the existence of legal provisions for the prosecution of human rights violators, impunity continues to exist in practice. De facto impunity has been reported in the following countries: Burundi, Cambodia, Colombia, Guatemala, India, Russian Federation, Rwanda, Togo, Tunisia and Turkey. The Special Rapporteur is particularly concerned at information received, according to which in Colombia, only 3 per cent of

cases of reported crimes end with a judicial sentence. It has been reported that the authorities often do not react to complaints filed by victims, their families or representatives, or by international entities, including the Special Rapporteur. In this context, it should be recalled that Governments are ex officio under an obligation to initiate inquiries into allegations as soon as they are brought to their attention, particularly where the alleged violation of the right to life is imminent, and effective measures of protection must be adopted by the authorities. However, in some countries, more often than not, investigations are not conducted. In other countries, despite the fact that investigations are initiated, they are never concluded or, if they are, sentences imposed on perpetrators appear to be disproportionate to the gravity of the crime committed. There are also instances where low-ranking officials are convicted while those in positions of command escape responsibility.

97. Furthermore, problems related to the functioning of the judiciary, particularly its independence and impartiality, have also encouraged impunity. In some countries there is no independent judiciary that could conduct such investigations, or in others the justice system does not function in practice. Where the justice system does not function properly it is desirable that reforms be implemented to enable the judiciary to fulfil its functions effectively. In some cases, which warrant particular treatment because of their special nature or gravity, Governments may envisage establishing special commissions of inquiry, which must fulfil the same requirements of independence, impartiality and competence as judges in ordinary courts. The results of their investigations should be made public and their recommendations binding on the authorities. The Special Rapporteur is concerned that in some cases recommendations made by such commissions are not followed in practice, or do not fulfil the above-mentioned requirements, and become tools used to evade the obligation to undertake thorough, prompt and impartial investigations into violations of the right to life.

98. The Special Rapporteur expresses his concern about reports regarding trials of members of the security forces before military courts, where, it is alleged, they evade punishment because of an ill-conceived esprit de corps, which generally results in impunity.

99. The Special Rapporteur wishes to draw the attention of the Commission on Human Rights to the two following issues.

1. Mob killings

100. The Special Rapporteur is concerned about the growing occurrence of mob killings worldwide. In many countries suspected robbers, suspected murderers, members of discriminated groups and even persons responsible for traffic accidents are often summarily executed in the streets by angry mobs. It is reported that those responsible for such so-called "popular justice" are often not identified, prosecuted or brought to justice. The Special Rapporteur considers that such a situation contributes to impunity and to the spread of violence, including violations of the right to life.

2. International jurisdictions

101. The Special Rapporteur appreciates the establishment of the International Tribunals under Security Council resolutions 808 (1993) and 955 (1994) for certain serious crimes, including violations of the right to life, committed in the former Yugoslavia and in Rwanda. The Special Rapporteur welcomes these initiatives. He appeals to all Governments to cooperate fully with these Tribunals, in the interest of holding responsible the authors of such crimes committed in the former Yugoslavia and Rwanda. Concerns have been raised as to the apparent selectivity with regard to the countries for which international tribunals have been established. In fact, the former Yugoslavia and Rwanda are not the only conflict areas where massive violations of human rights and humanitarian law justify such an institution. Others, such as Burundi, Cambodia, Liberia and the Sudan, come readily to mind.

102. The Special Rapporteur believes that two measures could be taken to help overcome this perception of selectivity and contribute to a more impartial and comprehensive approach to the problem of impunity. These measures are: (a) the establishment of a permanent international criminal court with universal jurisdiction over mass violations of human rights and humanitarian law; such an international criminal court would have to be bestowed with an adequate mandate and sufficient means to enable it to conduct thorough investigations and enforce the implementation of its decisions; and (b) the adoption of a convention, similar to the Convention against Torture, which would provide domestic courts with international jurisdiction over persons suspected of having committed mass violations of the right to life. Such a convention should also contain provisions for the allocation of compensation to victims, such as, for instance, a voluntary fund.

C. Cooperation with the High Commissioner for Human Rights and with other United Nations bodies

103. The Special Rapporteur accords great importance to cooperation with other United Nations bodies dealing with issues related to his mandate. This has taken the form of consultations, either on questions concerning the day-to-day operation of his mandate, or in the preparation of, and during, on-site visits. During 1996 a mission to Nigeria together with the Special Rapporteur on the Independence of Judges and Lawyers, Mr. Param Cumaraswamy, had been scheduled to take place. However, several postponements by the Nigerian authorities have meant that the mission has not yet taken place. In addition in 1996, the Special Rapporteur also requested the Government of Mexico for an invitation to undertake a joint visit to the country together with the Special Rapporteur on the question of torture, Mr. Nigel Rodley. At the time this report was being finalized he was informed by the Government of Mexico that his request for a visit would be discussed after the visit of the Special Rapporteur on the question of torture. In addition, the Special Rapporteur has continued to cooperate with other special rapporteurs and working groups by transmitting joint urgent appeals.

104. During the period under review, coordination efforts between different United Nations procedures have continued. Thus, the Special Rapporteur held

meetings in New York with the Department of Peace-Keeping Operations and the Department of Political Affairs in order to discuss issues of common concern and to search for ways to improve coordination. In addition, he has continued to receive information coming from United Nations offices, including offices of the High Commissioner for Human Rights, in the field. Efforts at coordination with the Crime Prevention and Criminal Justice Branch of the United Nations in Vienna culminated in the Special Rapporteur's participation in the fifth session of the Commission on Crime Prevention and Criminal Justice, held at Vienna from 21 to 31 May 1996.

105. The meeting of special rapporteurs, special representatives, experts and chairpersons of working groups of the Commission on Human Rights, which took place in May 1996, was also an opportunity for the various mechanisms of the Commission to discuss matters of common interest and concern.

106. As to coordination with the United Nations High Commissioner for Human Rights, the Special Rapporteur held consultations regarding the situation in Nigeria. In September 1996, the Special Rapporteur requested the High Commissioner to use his good offices in order to facilitate the extension of an invitation for a visit to Tajikistan. The Special Rapporteur considers that coordination with the High Commissioner should also be strengthened regarding visits, in order to avoid any duplication of efforts. Furthermore, special rapporteurs should be involved in consultations before field offices of the United Nations High Commissioner for Human Rights are set up in countries of common concern. Such field offices are aimed at strengthening human rights mechanisms and should therefore include in their mandates the servicing of Special Rapporteurs.

VI. CONCLUDING REMARKS AND RECOMMENDATIONS

107. The Special Rapporteur is constrained to conclude once again that there is no indication that the number of violations of the right to life has decreased. The transmission of 131 urgent appeals and allegations of violations of the right to life on behalf of more than 1,300 individuals, as well as follow-up communications to more than 50 countries, during the period under review, offers an insight as to the persistent magnitude of the occurrence of extrajudicial, summary or arbitrary executions worldwide.

108. One of the most prevalent targets of extrajudicial, summary or arbitrary executions have continued to be persons involved in struggles such as those to secure rights to land or to prevent or combat racial, ethnic or religious discrimination and ensure respect for social, cultural, economic, civil and political rights. Women, children, the elderly and the sick have not been spared. Even persons forced into exile and those who are internally displaced are not exempted.

109. The conclusions expressed by the Special Rapporteur in his report to the General Assembly (A/51/457, para. 136) as to the underlying factors aggravating the phenomenon of extrajudicial, summary or arbitrary executions remain fully applicable.

110. In view of the large number of extrajudicial, summary or arbitrary executions that continue to take place, the Special Rapporteur wishes to

reiterate that the effectiveness of his mandate is hampered by the various impediments which are built into the United Nations framework. The Special Rapporteur is called upon to act on information transmitted to him, but the human resources at his disposal are increasingly disproportionate to the large number of requests placed before him. This aspect of the problem is particularly regrettable in the light of the expectations created that United Nations mechanisms are equipped to provide protection to individuals and communities. In addition, there is no formal mechanism within the United Nations human rights structure to follow up on recommendations made by its experts. Furthermore, the capacity of the United Nations to prevent human rights crises, including genocide, is at least questionable.

111. Consequently, the Special Rapporteur urges the international community to assist in the establishment of a coherent multifaceted system of prevention of conflicts that would embody a rapid intervention component to avert the degeneration of situations where the threat of massive human rights violations exists. Such a system would not only involve the participation of United Nations organs but would also require the concerted efforts of Governments and non-governmental organizations.

112. In this regard, the Special Rapporteur deplores the fact that the Convention on the Prevention and Punishment of the Crime of Genocide, which treats not only the repression but also the prevention of genocide, has not gained the attention it deserves from the international community. This situation is particularly lamentable in the light of the fact that several States parties to the Convention are in possession of the financial and technical means to enable them to establish a system of rapid alert in regions where political situations are identified as being volatile.

113. Once human rights and humanitarian violations have been committed on a massive scale, there is no universal mechanism for the identification and prosecution of persons suspected of having instigated or participated in the commission of those crimes. Moreover, there is no permanent international judicial body that could ensure that the alleged perpetrators will be brought to justice even where both the political will and a functioning judiciary are absent at the national level. In other words, the idea of a global village does not extend to the rule of law.

114. The Special Rapporteur considers that extrajudicial, summary or arbitrary executions can be prevented only if there is a genuine will on the part of Governments not only to enforce the safeguards and guarantees for the protection of the right to life of every person, but also to strengthen them further. Unfortunately, trends in the opposite direction seem to be emerging. Declarations of commitment to protection of the right to life by Governments are only effective if they are translated into practice. If the aim is protection of the right to life, the emphasis must be on prevention of violations of this fundamental right and their consequences, which are often irreparable.

Recommendations

115. The international community should concentrate its efforts on the effective prevention of further human rights crises, and on the implementation of existing standards for the protection of the right to life.

1. Capital punishment

116. States that have not ratified the International Covenant on Civil and Political Rights and, in particular, its Second Optional Protocol, are encouraged to do so. All States should bring their domestic legislation into conformity with international standards. States that enforce their capital punishment legislation should observe all the fair trial standards contained in the relevant international legal instruments, in particular the International Covenant on Civil and Political Rights. In addition, Governments that continue to enforce such legislation with respect to minors and the mentally ill are particularly called upon to bring their domestic criminal laws into conformity with international legal standards.

117. States should provide in their national legislation a period of at least six months so as to allow a reasonable amount of time for the preparation of appeals to courts of higher jurisdiction and petitions for clemency before a death sentence is executed. Such a measure would prevent hasty executions while affording defendants the opportunity to exercise all their rights. Officials responsible for carrying out an execution order should be fully informed of the state of appeals and petitions for clemency of the prisoner in question, and should not proceed to an execution if an appeal or other recourse procedure is still pending.

118. An immutable fact remains that the loss of life is irreversible and judicial error irreparable. A wide range of experts in sciences such as criminology, sociology and psychology have expressed doubts concerning the deterrent effect of capital punishment. Therefore, Governments of countries in which the death penalty is still enforced are urged to deploy every effort that could lead to its abolition, the desirability of which has repeatedly been affirmed by the General Assembly.

2. Death threats

119. State authorities should conduct investigations with respect to all instances of death threats or attempts against lives that are brought to their attention, regardless of whether a judicial or other procedure has been activated by the potential victim. Governments should adopt effective measures to ensure full protection of those who are at risk of extrajudicial, summary or arbitrary execution.

120. In circumstances where certain State authorities or sectors of the civil society perceive political dissent, social protest or the defence of human rights as a threat to their authority, the central government authorities should take action to create a climate more favourable to the exercise of those rights and thus reduce the risk of violations of the right to life.

3. Death in custody

121. All Governments should ensure that conditions of detention in their countries conform to the Standard Minimum Rules for the Treatment of Prisoners and other pertinent international instruments. Governments should also deploy efforts to ensure full respect for international norms and principles prohibiting any form of cruel, inhuman or degrading treatment.

122. Prison guards and other law enforcement personnel should receive training on the observance of the aforementioned norms in performing their duties. Violations of the right to life committed by these State agents in the course of controlling prison disturbances and preventing prison escapes would be curbed if the agents took into consideration the rights of prisoners. All deaths in custody should be investigated by a body that is independent from the police or the prison authorities.

123. Because of the magnitude of the problem, the Special Rapporteur requests the Commission on Human Rights to consider appointing a Special Rapporteur on conditions of detention and prison conditions, following the example set by the African Commission on Human and Peoples' Rights, which has recently nominated such a rapporteur. In addition, he requests the Commission on Human Rights to call for the rapid adoption of an optional protocol to the Convention against Torture with a view to establishing a system of periodic visits to places of detention.

4. Excessive use of force by law enforcement officials

124. All Governments should ensure that their security personnel receive thorough training in human rights issues, particularly with regard to restrictions on the use of force and firearms in the discharge of their duties. Such training should include, for instance, the teaching of methods of crowd control without resorting to lethal force. Every effort should be made by States to combat impunity in this field.

5. Violations of the right to life during armed conflict

125. All States that have not yet done so are encouraged to ratify the four Geneva Conventions of 1949 and their two Additional Protocols. The training of members of the armed forces and other security forces should include substantive instruction on the content of these instruments in addition to those dealing with human rights.

126. Governments of countries in which terrorist groups are active should ensure that counter-insurgency operations are conducted in conformity with human rights standards so as to minimize the loss of lives.

6. Genocide

127. All Governments are encouraged to ratify the Convention on the Prevention and Punishment of the Crime of Genocide. The Special Rapporteur calls on States to pay due attention to the stipulations in the Convention concerning the prevention of genocide. Concerned States, assisted by the international community, should take all necessary measures to prevent acts

of communal violence from degenerating into large-scale killings that may reach the dimension of genocide. States in which acts of communal violence occur should do their utmost to curb such conflicts at an early stage, and to work towards reconciliation and peaceful coexistence of all segments of the population, regardless of ethnic origin, religion, language or any other distinction. Governments should at all times refrain from any propaganda or incitement to hatred and intolerance that might foment acts of communal violence or condone such acts.

128. The Special Rapporteur, pursuant to article VIII of the Convention on the Prevention and Punishment of the Crime of Genocide, encourages the States parties to the Convention to call upon the competent organs of the United Nations to take action in order to prevent and suppress acts of genocide.

129. The Special Rapporteur believes that a monitoring mechanism to supervise the implementation of the Convention on the Prevention and Punishment of the Crime of Genocide should be established.

7. Imminent expulsion of persons to countries where their lives are in danger

130. Governments that have not yet ratified the Convention and the Protocol Relating to the Status of Refugees are called upon to do so. All Governments should at all times refrain from expelling a person in circumstances where respect for his or her right to life is not fully guaranteed. Refoulement of refugees or displacement of internally displaced persons to countries or areas where respect for their right to life is not fully guaranteed, as well as the closure of borders preventing the escape of persons trying to flee a country, should at all times be prohibited. Whenever a country is faced with a massive influx of refugees the international community should provide necessary assistance.

8. Impunity

131. All States should conduct exhaustive and impartial investigations into allegations of violations of the right to life, in all of its manifestations, and identify those responsible. They should also prosecute the alleged perpetrators of such acts, while taking effective measures to avoid the recurrence of such violations. To this effect, blanket amnesty laws prohibiting the prosecution of alleged perpetrators and violating the rights of the victims should not be endorsed.

132. The Special Rapporteur believes that the following measures could be taken to combat the problem of impunity: (a) establishment of a permanent international criminal court, with universal jurisdiction over mass violations of human rights and humanitarian law; such an international criminal court would have to be bestowed with an adequate mandate and sufficient means to enable it to conduct thorough investigations and enforce the implementation of its decisions; and (b) adoption of a convention, similar to the Convention against Torture, which would provide domestic courts with international jurisdiction over persons suspected of having

committed mass violations of the right to life; such a convention should also contain provisions for the allocation of compensation to victims.

133. The Special Rapporteur welcomes the developments and discussions on the draft code on crimes against the peace and security of mankind and the draft statute on the establishment of an international criminal court and reiterates his call to the General Assembly to adopt them as soon as possible.

9. Rights of victims

134. All States should include in their national legislation provisions that allow for adequate compensation and facilitate access to judicial remedies to victims and the families of victims of violations of the right to life. States should endorse the principles set out in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly in its resolution 40/34 of 29 November 1985, and incorporate them in their national legislation.

Notes

1/ This figure does not include large groups of persons for which only an approximative number of individuals was known.

2/ See also E/CN.4/1996/16/Add.1, para. 50.

3/ See E/CN.4/1997/6 and Add.1, Report of the Special Rapporteur on the situation of human rights in Zaire.

4/ See also the report of the United Nations High Commissioner for Human Rights on human rights and mass exoduses (E/CN.4/1997/42).

5/ See HRI/GEN/1/Rev.2 of 29 March 1996.

6/ E/1995/78, para. 87.

7/ The Universal Declaration of Human Rights, articles 10 and 11; the International Covenant on Civil and Political Rights, articles 9, 14 and 15; the safeguards guaranteeing protection for all those facing the death penalty, as well as Economic and Social Council resolution 1989/65.

8/ See Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Economic and Social Council resolution 1989/65, annex), which set forth in detail the above-mentioned obligations, and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

9/ See principle 19 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, which states, in part, " In no circumstances...shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, summary or arbitrary executions".